IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 20 OF 2007

Shri Ramesh Narhar Wagh ... Applicant (Original deft.)

Vs.

Shri Anant Sadashiv Wagh & Ors. ... Respondents

Mr. R.V. Govilkar for the Applicant

CORAM : SHRI. A.M. KHANWILKAR, J.,
DATE : 2ND MARCH, 2007

P.C.

1) Heard counsel for the applicant. I am in agreement with the conclusion reached by the lower Court in rejecting the application preferred by the applicant- original defendant for rejection of the plaint under Order 7, Rule 11.

2) The argument before this Court that on fair reading of Para 14 of the plaint, it is obvious that the suit is to challenge the existence of consent terms dated 24th July 1985. The suit having been filed in 2006 for that relief, was obviously barred by Law of Limitation.

3) The argument clearly overlooks the tenor of

the averments contained in para 14 of the plaint. According to the plaintiff, he acquired knowledge about the existence of consent terms dated 24th July 1985 only recently. The fact that the date of acquiring such knowledge is not mentioned in the plaint does not mean that the suit is barred by Law of Limitation. It will be for the parties to establish their stand before the trial Court as to when the knowledge was acquired and whether the suit filed in 2006 was therefore within limitation.

4) The trial Court has also rightly opined that there are two prayers in the present suit and the entire plaint cannot be thrown out as the first prayer nevertheless will have to be considered by the trial Court. There is no reason to interfere with the order of trial court.

5) Hence this application is dismissed.

(A.M. KHANWILKAR, J.)